

**TOWN OF DAVIE  
TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Herb Hyman/797-1016

**SUBJECT:** Resolution

**AFFECTED DISTRICT:** N/A

**TITLE OF AGENDA ITEM:** A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH FIRST AMERICAN TELECOMMUNICATIONS CORPORATION FOR INSTALLING, OPERATING, AND MAINTAINING PAY TELEPHONES.

**REPORT IN BRIEF:** The Town currently has seven (7) pay telephones that are operated by First American Telecommunication Corporation (FATC). The Town locates pay telephones (mostly in parks) as a public service (see Attachment “B”). In addition to the seven (7) phones currently in operation, staff has identified eight (8) additional locations for pay telephones. There are costs associated with the installation/start up of a pay telephone. The back up to Attachment “B” delineates these costs by location. If the Town opts to install the eight (8) additional phones identified by staff, the total installation cost would be \$1,635.00. The contract recognizes that there is a cost associated with operating and maintaining pay telephones. The proposed agreement identifies that cost as \$47.50/phone/month. The compensation/billing is described in Section 2 of the attached contract. Since the advent of cell phones, pay telephones do not generate large amounts of revenue (i.e. the need to use pay telephones have substantially decreased). Attachment “D” is a revenue report for the seven (7) operating telephones. We expect the additional locations will generate less revenue, on average, than the existing seven (7) phones (i.e. an average of \$26.70/phone/month). If this assumption is true, there would be an additional cost of at least \$20.80/phone/month. FATC is the largest of the few companies that still offer this service. FATC has contracts with the City of Plantation and Nova Southeastern University (see Attachment “C”). The Town’s most recent contract with FATC has expired and a new agreement needs to be executed. The contract may generate a revenue stream if FATC is successful in selling advertising for the enclosures as described in Section 2a on page 2 of the proposed contract. The Town reserves the right to approve any advertising. Council may choose to: 1) approve the contract for only the seven (7) phones in operation at an estimated annual cost to the Town of \$1,748.00, or 2) approve the seven (7) in operation plus the additional eight (8) identified by staff at an estimated annual cost of \$3,744.00 plus a one time installation cost of \$1,635.00, or 3) continue to operate only those phones generating “X” dollars/month. Costs will vary based on where we set the minimum revenue amount. If the minimum amount is set at \$30.00/month, only three (3) of our existing seven (7) would continue in service and would cost \$304.00/yr., or 4) do not subsidize any pay telephones. The initial contract is a three (3) year agreement with an option to extend the contract for additional one (1) year terms up to a maximum of ten (10) years by mutual agreement of the parties. The contract allows the Town the option to remove from service any telephones that are underperforming. Contract extensions, if appropriate, will be handled administratively by staff subject to budgetary approval by Town Council.

**PREVIOUS ACTIONS:** Not applicable.

**CONCURRENCES:** This contract was negotiated by the Procurement Manager and the Assistant Town Administrator with input from the Public Works Director.

**FISCAL IMPACT:**

Has request been budgeted? No

Expected cost: dependent on the option selected by Council

Additional Comments: If approved, funding would come out of the Contingency Fund

**RECOMMENDATION(S):** Motion to approve option #3. Continue to operate only those pay phones generating at least \$30.00/mo. With the review every six months to ensure the phones are still being utilized to at least that level. This would reduce the number of phones being subsidized town wide to three (3).

**Attachment(s):**

Two (2) copies of master agreement

List of phone locations

Letter from Nova Southeastern University dated October 18, 2002

Twelve month revenue report

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH FIRST AMERICAN TELECOMMUNICATION CORPORATION FOR INSTALLING, OPERATING AND MAINTAINING PAY TELEPHONES.

WHEREAS, there are several pay telephones on Town property; and

WHEREAS, the Town may want to add or delete pay telephones at designated location as a public service; and

WHEREAS, it is in the Town's best interest to enter into a contract for the installation, operation, and maintenance of these pay telephones; and

WHEREAS, after review, the Town Council authorizes the Mayor to execute a contract with First American Telephone Corporation.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council authorizes the Mayor to execute a contract with First American Telephone Corporation for installing or removing, operating, and maintaining pay telephones which is attached hereto and identified as Attachment "A".

SECTION 2. The initial term is one (1) year with options to extend the contract for additional one (1) year terms up to a maximum of ten (10) years by mutual agreement of the parties. Contract extensions, if appropriate, will be handled administratively by staff subject to budgetary approval by Town Council.

SECTION 3. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2003

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

Attest:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2003

## LICENSE AGREEMENT

**THIS LICENSE AGREEMENT** ("Agreement") entered into this \_\_\_\_ day of \_\_\_\_\_, 2003, between the Town of Davie, Florida, a municipal corporation of the State of Florida ("Licensor"), whose address is 6951 Orange Drive Davie, Florida 33314 and First American Telecommunication Corporation ("Licensee"), a corporation of The State of Florida, whose address is 1527 NE 4<sup>th</sup> Avenue, Ft. Lauderdale, FL 33304.

**WHEREAS**, the Licensee is in the business of installing, operating, and maintaining coin operated telephones; and

**WHEREAS**, the Licensor owns property listed in Exhibit "A", and desires to grant a license to the Licensee for the purpose of the Licensee installing, operating and maintaining coin operated telephones thereon subject to all terms, covenants, conditions and provisions set forth below.

**NOW THEREFORE**, in consideration of the sum of Ten Dollars (\$10.00), receipt of which is hereby acknowledged and the mutual terms, covenants, conditions and provisions set forth therein, Licensor and Licensee agree as follows:

1. **Term of Agreement.** The initial term of this Agreement is Three (3) years, with an option(s) to extend the Agreement on a yearly basis up to a maximum of ten (10) years, subject to any additional terms and conditions that may be negotiated. Contract extensions, if appropriate, will be handled by mutual agreement of the parties. The Town reserves the right to review revenue records once every six months. If the Town determines that a phone is underperforming, the Town should have the right to have the phone removed. Furthermore, if the Town requires additional payphone installations, they will be added by the Licensor subject to the terms and conditions provided herein.
2. **Compensation and/or Billing.** The Licensee will charge the Town a flat service fee of \$47.50 per phone, per month. If the payphones generate coin (collectively on total number of phones-*\*based on 17 phones*) more than a \$47.50 per phone average, the Town will be compensated at 30% of the revenue generated.

### Examples

\*For example, if the phones average \$70.00 (collectively) per phone, per month, the Town shall receive 30% of the commissionable revenue (\$382.50), for a payment of \$114.75 for that month.

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\*If a phone average less than the service fee amount for that month, the Town will be billed the difference between the amount generated and the service fee of \$47.50 per phone. If the phones average \$45.00 (collectively) per phone, per month, the Town shall billed \$42.50 for that month (\$807.50 (Fee) - \$765.00 (revenue generated) = \$42.50 (difference billed)).

a. **Advertising Enclosures:** First American will pay the Town of Davie 38% of the advertising revenue per year for each phone advertising enclosure installed. Sites will be chosen in areas acceptable to First American and the advertiser and the Town of Davie. If said enclosure is installed, the Town will not be charged the per phone service fee referenced above for that location. Compensation will not be due unless commercial advertising is sold and placed on the kiosk in the calendar year. It is agreed that "filler" or "public service" posters may be placed on the kiosk when advertisement space is not sold. There shall be no tobacco or sexually explicit material advertised on or at the pay telephone. The Town has the right to monitor all advertisements posted on the enclosures. Any objections shall be reviewed and addressed within 72 hours after it is made.

b. If the Town of Davie wishes Licensee to install new payphone locations (equipment and line) on Town property, there will be a one (1) time installation fee of \$150.00 per payphone. All new installations will become part of this agreement and subject to the terms and conditions contained herein. There will also be a charge for a new line (telephone line only) installation of \$65.00 per payphone.

3. **Installation, Operation, Service and Maintenance of Coin Operated Phones.**

a. It is understood and agreed that the Licensee shall install, operate, service and maintain one coin operated phone (the "Phone") in the space on Licensor's premises as set forth in Exhibit "A". Furthermore, Licensee shall have the exclusive right to open, adjust, remove, disconnect, repair, replace, update, modify, connect and alter any Phone which is reasonably necessary to the successful operation of the phone equipment. Installation, placement, and location of the Phones must be mutually agreed upon. The Phones must be kept in a

by Licensee. Licensor is not responsible for reporting service issues to Licensee. Licensee utilizes "smart phone" technology to detect non-service issues with payphones operated.

- b. Licensor shall notify Licensee by certified mail, return receipt requested, addressed to the principal office of the Licensee, of any deficiencies in equipment, failure of service, nonpayment of space rent, or any other failure to perform any of the covenants contained herein. Licensee shall have fourteen (14) days upon receipt of said notification to cure any of the deficiencies described in the Licensor's notification; provided, however, Licensee shall have additional time to cure deficiencies if the failure to cure is caused by the acts or omissions of the local LEC.
  - c. The Licensee shall install all Phones in accordance with the American's Disability Act. All payphones installed will not ring or accept incoming calls per request of the Town of Davie Police Department.
  - d. Upon the removal of any Phone, or the termination of this Agreement, the Licensee shall return the Lessor's property to the same condition as before the execution of the Agreement.
4. **Construction.** Licensor and Licensee hereby acknowledge that they have fully reviewed this Agreement and its attachments and have had the opportunity to consult with legal counsel of their choice, have participated in the negotiating and drafting of the Agreement, that this Agreement shall not be construed against any party as if they were the drafter of this Agreement.
5. **Indemnification and Insurance.** Licensee shall indemnify and hold harmless the Licensor against any and all claims for bodily injury, sickness, disease, death or personal injury or damages to property or loss of use resulting herefrom arising out of this Agreement. Licensor shall promptly give notice to the Licensee of any claim received by the Licensor in connection with the performance of this Agreement. Nothing in this section shall be construed as a waiver of Licensor's sovereign immunity.
6. **Worker's Compensation Insurance.** Licensee shall provide statutory workers compensation Insurance unless Licensee is exempt under Chapter 440, Florida Statutes. Licensee shall execute any forms necessary to establish such exemption.

7. **Independent Contractor.** Licensee shall perform the terms and conditions of this Agreement as an independent contractor, and nothing contained in the Agreement shall be construed to be inconsistent with this relation or status. Nothing in this Agreement shall in any way be construed to constitute Licensee or any of its agents or employees as the representatives, agents and employees of the Licensor.
8. **Modification of Agreement.** No modification of this Agreement shall be binding on Licensor or Licensee unless reduced to writing and signed by a duly authorize representative of the Licensor and Licensee.
9. **Severability.** In the event a court of competent jurisdiction determines any sentence, provision, paragraph or section of this Agreement to be null and void, the remaining parts of this Agreement shall continue in full force and effect as though such sentence, provision, paragraph or section had been omitted from the Agreement.
10. **Entire Agreement.** This Agreement incorporates and includes all negotiations, correspondence, conversation, agreements or understanding applicable to the matters contained herein, and Licensor and Licensee agree that there are no commitments, warranties or understandings concerning the subject matter of this Agreement that is not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or Agreements whether oral or written.
11. **Prohibition Against Contingent Fees.** Licensee warrants that it has not employed or retained any company or person other than a bona fide employee working solely for Licensee, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person (s), company, corporation, individual or firm other than a bona fide employee working for Licensee, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement.
12. **Venue.** Venue for any legal action initiated to interpret, construe or enforce this Agreement shall be in Broward County, Florida.
13. **Waiver.** No delay or failure on the part of any party to exercise any right or remedy accruing to such party upon the occurrence of any event of default or violation shall effect any such right or remedy or be held to be an abandonment thereof or preclude such party from the exercise thereof at any time during the continuation of any event of

event of default or violation shall effect any such right or remedy or be held to be an abandonment thereof or preclude such party from the exercise thereof at any time during the continuation of any event of default or violation. No waiver of a single event of default or violation shall be deemed to be a waiver of any subsequent event of default or violation.

14. **Records/Audits.** Licensee shall maintain, and require all it's subcontractors to maintain correct and complete records, books, documents, papers and account pertaining to services performed in connection with this Agreement. Such records, books, documents, papers and accounts shall be available at all reasonable times for examination and audit by the Licensor or any authorized representative of Licensor upon reasonable notice and shall be kept for a period of three (3) years after the termination of this Agreement.
15. **Title.** Title to all Phones shall be and remain in the Licensee.
16. **Risk of Loss.** The Licensee and its insurers, if any, shall relieve the Licensor of all risks of loss or damage to the Phones during the periods of transportation and installation of Phones.
17. **Default.** This Agreement shall be terminated at the option of either party upon the occurrence of any one of the following events:
  - a. If the Licensee fails to cure any deficiency identified by the Licensor within fourteen (14) days in accordance with this agreement.
  - b. Except as provided in this subsection, if either party is in breach or default of any term, condition, covenant or provision of this Agreement, and such breach or default continues for a period of thirty (30) days after the giving of written notice thereof.
18. **Notices.** All notices, demands, requests, consents, approvals and other communications (collectively, "Notices"), required or permitted to be given hereunder, shall be in writing and sent by facsimile (or similar device) and by either: (1) registered or certified air mail, postage prepaid, return receipt requested; or (2) special delivery service (e.g. Federal Express, DHL, UPS, etc.); addresses to the party to be so notified as follows:



**If to Licensor**

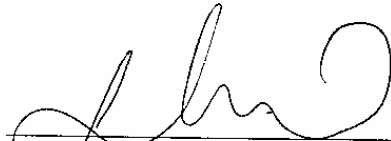
Town of Davie  
Attn: Procurement Manager  
6951 Orange Drive  
Davie, Florida 33314

**If to Licensee**

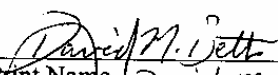
First American Telecommunication Corporation  
1527 NE 4<sup>th</sup> Avenue  
Ft. Lauderdale, FL 33304


Each notice sent in accordance with the requirements of this section shall be deemed effectively given upon actual receipt. Each person designated herein to receive any notice or a copy thereof may change the address at which, or the person to whom notice or a copy thereof is to be delivered, by notice given in accordance with the requirements of this section.

**IN WITNESS THEREOF**, the parties respectively executed this agreement as of the day and year first written above.

  
\_\_\_\_\_  
Goran Dragoslavic, President  
First American Telecommunication Corp.

Date: 2-24-03

Witness:   
\_\_\_\_\_  
Print Name David m. Betts

Witness:   
\_\_\_\_\_  
Print Name  
Terry Green

\_\_\_\_\_  
Town of Davie

\_\_\_\_\_  
Name/Title:

\_\_\_\_\_  
Date:

Witness: \_\_\_\_\_  
Print Name

Witness: \_\_\_\_\_  
Print Name